

EXHIBIT F



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Transcript of Carl Schwedler

Date: July 8, 2022

Case: XR Communications, LLC -v- D-Link Systems, Inc., et al.

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Conducted on July 8, 2022

1	UNITED STATES DISTRICT COURT	1	C O N T E N T S	3
2	FOR THE CENTRAL DISTRICT OF CALIFORNIA	2	EXAMINATION OF CARL SCHWEDLER	PAGE
3	Case No. 8:17-cv-00596-AG(JCGx)	3	By Mr. Haslam	5
4	XR COMMUNICATIONS, LLC, dba :	4	By Mr. Wang	41
5	VIVATO TECHNOLOGIES, :	5	By Mr. Haslam	48
6	Plaintiffs, :	6	By Mr. Wang	50
7	vs. :	7	By Mr. Haslam	52
8	D-LINK SYSTEMS, INC., et al., :	8	E X H I B I T S	
9	Defendants. :	9	(Exhibits are attached to the transcript.)	
10	-----	10	C. SCHWEDLER DEPOSITION EXHIBITS	PAGE
11	Videotaped Videoconference Deposition of	11	Exhibit 1 Bates Nos. XR-00007813 - 7828	7
12	CARL SCHWEDLER	12	Exhibit 2 Bates Nos. XR-00007834 - 7836	11
13	Friday, July 8, 2022	13	Exhibit 3 Bates Nos. XR-00007837 - 7872	15
14	4:08 p.m. Eastern	14	Exhibit 4 Bates Nos. ARUBA_0033271 - 276	19
15		15	Exhibit 5 Bates Nos. ARUBA_0033278 - 879	22
16		16	Exhibit 6 Bates Nos. ARUBA_0034878 - 902	28
17		17	Exhibit 7 Bates Nos. ARUBA_0032688 - 692	32
18		18	Exhibit 8 Bates Nos. ARUBA_0032693 - 739	33
19		19	Exhibit 9 Bates Nos. ARUBA_0032740 - 743	37
20		20	Exhibit 10 Bates Nos. ARUBA_0032795 - 798	38
21		21	PREVIOUSLY MARKED EXHIBITS	PAGE
22		22	Exhibit 5 Bates Nos. ARUBA_0033269 - 70	18
23	Job No.: 455291	23	(Ambrose)	
24	Pages: 1 - 55	24	Exhibit 11 Bates Nos. ARUBA_0034875 - 77	27
25	Reported By: Dawn M. Hart, RPR/RMR/CRR	25	(Brooks)	
1	Pursuant to Notice, before Dawn M. Hart,	1	P R O C E E D I N G S	4
2	RPR/RMR/CRR and Notary Public.	2	THE VIDEOGRAPHER: Here begins Disk No.	
3	A P P E A R A N C E S	3	1 in the video deposition of Carl Schwedler in the	
4	ON BEHALF OF THE PLAINTIFFS:	4	matter of XR Communications, LLC, dba Vivato	
5	PHILIP X. WANG, ESQUIRE	5	Technologies, vs. D-Link Systems, Inc., in the	
6	RUSS AUGUST & KABAT	6	U.S. District Court, Central District of	
7	12424 Wilshire Boulevard	7	California, Civil Action No. 8:17-cv-00596-DOC.	
8	Suite 1200	8	Today's date is July 8, 2022. Time on	
9	Los Angeles, California 90025	9	the video monitor is 4:08 p.m. Eastern. The	
10	(310) 826-7474	10	videographer is Drew Halton, for Planet Depos.	
11	ON BEHALF OF ARUBA NETWORKS:	11	All participants are attending remotely.	
12	ROBERT T. HASLAM, ESQUIRE	12	Would counsel please voice identify	
13	COVINGTON & BURLING, LLP	13	themselves and state whom they represent.	
14	3000 El Camino Real, 10th Floor	14	MR. HASLAM: Bob Haslam, from	
15	Palo Alto, California 94306	15	Covington Burling, representing Aruba Networks.	
16	(650) 632-4700	16	With me is Kee Young Lee.	
17	ON BEHALF OF DEFENDANTS BELKIN AND NETGEAR:	17	MR. WANG: Philip Wang, from the law	
18	TYLER MARANDOLA, ESQUIRE	18	firm of Russ August & Kabat, for Plaintiff,	
19	DUANE MORRIS, LLP	19	XR Communications, dba Vivato Technologies. I'm	
20	30 South 17th Street	20	joined by my colleague Anna Prusko, also of	
21	Philadelphia, Pennsylvania 19103-4196	21	Russ August & Kabat, also for Plaintiff XR.	
22	(215) 979-1000	22	MR. MARANDOLA: Tyler Marandola, of the	
23	ALSO PRESENT: Kee Young Lee, Covington & Burling	23	law firm of Duane Morris, for the Defendants	
24	Anna Prusko, Russ August & Kabat	24	NetGear, Inc., and Belkin International, Inc.	
25	Drew Halton, Videographer	25	THE VIDEOGRAPHER: The Court Reporter is	

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5	7
1 Dawn Hart, representing Planet Depos. Would the	1 interrupt (indiscernible). And, counsel, just so
2 Reporter please swear in the witness.	2 you know, because Mr. Schwedler is on an iPhone, I
3 CARL SCHWEDLER	3 do not think it's possible to remote control.
4 being first duly sworn or affirmed to	4 MR. HASLAM: Okay.
5 testify to the truth, the whole truth, and nothing	5 (Exhibit 1 was marked for identification
6 but the truth, was examined and testified as	6 and is attached to the transcript.)
7 follows:	7 BY MR. HASLAM:
8 EXAMINATION BY COUNSEL FOR ARUBA NETWORKS	8 Q Exhibit 1 is a Patent Assignment that
9 BY MR. HASLAM:	9 was filed by Bullivant -- attorneys at Bullivant,
10 Q Mr. Schwedler, have you been deposed	10 and it is a Security Agreement relating to
11 before?	11 Vivato Networks, Inc., and it is a Security
12 A Yeah, once.	12 Agreement with respect to Aequitas Capital
13 Q Okay. Just generally, then, as a	13 Management, Inc.
14 refresher, I'll be asking you questions. If you	14 A I see that.
15 understand the question, I'd appreciate an answer;	15 Q Okay. And if we scroll down -- I don't
16 if you don't understand the question, just let me	16 know if I can do that -- you can see that you were
17 know and I'll try to rephrase it.	17 indicated as the filing party, carljshwedler@
18 After I ask questions, Mr. Wang or other	18 bullivant.com.
19 counsel may follow up with questions that they may	19 A Yes.
20 have.	20 Q Do you recall filing at some point in
21 I will show you some documents during	21 time a -- the Security Agreement for
22 the questioning today, they'll be posted on the	22 Aequitas Capital Management in connection with a
23 screen. I will probably ask the videographer to	23 patent portfolio of Vivato Networks?
24 give you control of the documents if it would make	24 A I remember some files came in and --
25 it easier for you to scroll through it.	25 yeah, that must have been -- yeah, vaguely, I
6	8
1 Otherwise, I can scroll through it if I want to	1 guess that would have been establishing ownership
2 ask you questions on -- at various different parts	2 or -- yeah, that looks familiar. I --
3 of the document. Just let me know when we get	3 Q Let me go down -- and I'm going to show
4 there what's easiest for you.	4 you -- the attachment to Exhibit 1 is the
5 It's my understanding that you do not	5 Commercial Security Agreement granting from
6 practice law now, but you have practiced law in	6 Vivato, Networks Inc., to Aequitas Capital
7 the past; is that correct?	7 Management, Inc., security in a variety of
8 A That is correct.	8 collateral, including some patents and patent
9 Q Okay. And when you -- you were	9 applications.
10 practicing at one time, you were with the	10 A Yeah, that sounds --
11 Bullivant, B-U-L-L-I-V-A-N-T, law firm?	11 Q Do you recall that generally?
12 A Yes.	12 A Yeah, generally, that sounds familiar.
13 Q If you recall, during what time period	13 Q Okay. Had you done work for
14 were you practicing law at that time?	14 Aequitas Capital before filing what is Exhibit 1?
15 A I don't -- 2012-ish, give or take. I	15 A I doubt it. I don't remember it coming
16 don't know.	16 in that way. It was not -- it was not a client I
17 Q Okay.	17 had, it was a client from someone in another
18 MR. HASLAM: Well, let me have marked	18 office of Bullivant.
19 as -- pulled up as -- I'll mark it as an exhibit,	19 Q Okay. Do you recall talking to anyone
20 Tab 29.	20 at Aequitas Capital Management in connection with
21 AV TECHNICIAN: You'd like that marked	21 the filing of this Security Agreement?
22 as Exhibit 1?	22 A I don't have a specific recollection.
23 MR. HASLAM: Exhibit 1 to the Schwedler	23 Q Do you recall at any time in connection
24 deposition.	24 with your work with Aequitas -- and I'll just say
25 AV TECHNICIAN: And, Mr. -- sorry to	25 "Aequitas" because there's Aequitas Capital

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9

1 Management and Aequitas Equipment -- but do you
2 recall having conversations from time to time with
3 a Tom Sidley?
4 **A That name sounds familiar, but it may**
5 **be -- maybe it's from the documents, I don't know.**
6 **Q When you filed the Security Agreement**
7 **with the Patent Office, do you recall obtaining or**
8 **reviewing the file history for the particular**
9 **patents that you were filing the Security**
10 **Agreement?**
11 **A I think we had paper files delivered in**
12 **boxes at the time. And the paper files, I would**
13 **have at least (indiscernible) them to make sure**
14 **they were all what they purported to be, I**
15 **presume.**
16 **Q At some point in time did you -- well,**
17 **let me withdraw that.**
18 **Other than reviewing the paper files**
19 **that you received in paper boxes at the time you**
20 **filed the Security Agreement, do you recall doing**
21 **anything else other than just skimming through the**
22 **files?**
23 **A No, not really. It seems to me it was**
24 **kind of a rush -- a rush job. A bunch of files**
25 **were in need of a home, I guess, and I assume that**

10

1 **that submission was to allow us to prosecute going**
2 **forward.**
3 **Q Did you -- let me ask you, did any other**
4 **patent attorneys at the Bullivant firm assist you**
5 **in any of your activity with respect to the Vivato**
6 **files?**
7 **A There were a couple -- there was one**
8 **other registered patent attorney -- I don't know**
9 **if she was there at that time -- but I was -- my**
10 **recollection is I was the only registered patent**
11 **attorney working at the firm at that time.**
12 **Q And I think you said something about**
13 **this being a rush job, the files needed a home.**
14 **What are you referring to?**
15 **A I just seem to have a recollection that**
16 **there was -- the client, I guess that would have**
17 **been Aequitas, had acquired -- taken over the**
18 **assets of the company -- I guess that would be**
19 **Vivato -- and they -- I'm not sure they even knew**
20 **what they had.**
21 **It was kind of a -- the idea was to keep**
22 **the balls in the air until they could find out how**
23 **to dispose of the portfolio.**
24 **Q Okay. And so is it your best**
25 **recollection that it was another lawyer at the**

11

1 **Bullivant firm who asked you if you could --**
2 **A Yeah.**
3 **Q -- take charge of the files that related**
4 **to the Vivato patent assets?**
5 **A Yes. Yes. I don't -- I don't recollect**
6 **the name of that attorney; I was only at Bullivant**
7 **for a few years.**
8 **Q Okay.**
9 **MR. HASLAM: If we can have pulled up as**
10 **Tab 30, and we'll mark this as Exhibit 2.**
11 **(Exhibit 2 was marked for identification**
12 **and is attached to the transcript.)**
13 **Q And if you look at the first page of**
14 **Exhibit 2, this is an assignment of the security**
15 **interest from Aequitas Capital Management, Inc.,**
16 **to Aequitas Equipment Finance, LLC.**
17 **And if we scroll down to the second**
18 **page, you'll see again that this is a form that**
19 **was filed by you with the Patent Office?**
20 **A Yeah.**
21 **Q Do you recall anything about the**
22 **transfer of the loan agreement and the security**
23 **interest from Aequitas Capital Management to**
24 **Aequitas Equipment Finance?**
25 **A Not really. That was -- I was told that**

12

1 **those were the assignments -- I was shown the**
2 **paperwork, but I didn't work on the --**
3 **Q Okay.**
4 **A -- assignments, I didn't work on the**
5 **asset transfers, per se.**
6 **Q Okay. When you got the boxes of**
7 **files -- and you said you reviewed them at least**
8 **briefly, correct?**
9 **A Yes.**
10 **Q Do you recall, in reviewing them,**
11 **whether or not you noticed what the current status**
12 **of any of the patent applications was?**
13 **A They're at various statuses. There**
14 **seemed to be some -- some patents were issued, I**
15 **think, a number of them were in prosecution, I**
16 **believe some of them may have been abandoned.**
17 **Q And do you recall approximately, at**
18 **least by year, when you received the boxes of**
19 **files relating to the Vivato patents?**
20 **A I would just go -- I would -- I don't**
21 **recall. I would go off the date, 2007. I guess**
22 **that's the execution date on these conveyances on**
23 **these exhibits.**
24 **Q Indeed.**
25 **What date are you going by when you say**

Conducted on July 8, 2022

<p>13</p> <p>1 that?</p> <p>2 A Aequitas Capital Management, Inc.,</p> <p>3 that's not the execution a function date of this</p> <p>4 document, I guess.</p> <p>5 Q But the Loan Assignment Agreement on</p> <p>6 Exhibit 2 and the Commercial Security Agreement on</p> <p>7 Exhibit 1 were both executed in November 2007 --</p> <p>8 A Oh, well --</p> <p>9 Q -- and is it --</p> <p>10 (Simultaneous speaking.)</p> <p>11 Q Let me finish the question and then</p> <p>12 I'll -- you can answer and I won't interrupt you.</p> <p>13 Is it your recollection that you may</p> <p>14 have signed the -- filed these two documents in</p> <p>15 2007 to help perfect the security interest?</p> <p>16 A No, I -- I don't have any firm</p> <p>17 recollection of a date. I saw the date 2007 on</p> <p>18 one of the exhibits.</p> <p>19 Q Is it your best recollection that you</p> <p>20 filed Exhibit 1 and Exhibit 2 that we've just</p> <p>21 looked at when you first got the boxes of files,</p> <p>22 or is it your recollection that you may have filed</p> <p>23 the security interests and subsequently received</p> <p>24 the boxes of files?</p> <p>25 A I don't have a firm recollection. I</p>	<p>15</p> <p>1 depositions on that, that the witness not reveal</p> <p>2 any attorney/client privileged information.</p> <p>3 Q Well, let me ask you this.</p> <p>4 Did you -- yes or no, did you talk to</p> <p>5 the client about the fact that some of the files</p> <p>6 indicated that the applications had been</p> <p>7 abandoned?</p> <p>8 A Yes, I would have. I would have either</p> <p>9 talked to the client or I would have talked to the</p> <p>10 attorney representing the client in the office. I</p> <p>11 think may be more properly the Portland office.</p> <p>12 Q When you say "the attorney</p> <p>13 representing," that would have been the attorney</p> <p>14 at Bullivant?</p> <p>15 A Yes.</p> <p>16 Q Do you recall if you had a conversation</p> <p>17 with either or both of those people, the client or</p> <p>18 one of your colleagues?</p> <p>19 A I assume so -- well, I do remember</p> <p>20 having a conversation with my colleague at least.</p> <p>21 MR. HASLAM: Can we have marked as the</p> <p>22 next exhibit in order, Tab 31. We'll have this</p> <p>23 marked as Schwedler Exhibit 3.</p> <p>24 (Exhibit 3 was marked for identification</p> <p>25 and is attached to the transcript.)</p>
<p>14</p> <p>1 would assume I would have seen the boxes of files.</p> <p>2 Q Do you know -- did you recognize at any</p> <p>3 time going through the files a patent attorney by</p> <p>4 the name of Edward Brooks?</p> <p>5 A That sounds familiar.</p> <p>6 Q Do you recall ever having any</p> <p>7 conversations with Mr. Brooks?</p> <p>8 A No, I don't recall. I may have reached</p> <p>9 out to him; I don't recall.</p> <p>10 Q You indicated in an earlier answer</p> <p>11 that -- I believe -- that when you got the boxes</p> <p>12 of documents and went through them, that you saw</p> <p>13 that some of the files had gone abandoned; is that</p> <p>14 correct?</p> <p>15 A Yeah, I believe so. I think there's a</p> <p>16 spectrum of the status on the files.</p> <p>17 Q Okay. And when you saw that the patents</p> <p>18 had been abandoned, did you -- what steps did you</p> <p>19 take, if any, either to discuss that with the</p> <p>20 client or to take steps to deal with the</p> <p>21 abandonment?</p> <p>22 A I believe --</p> <p>23 MR. WANG: Sorry, excuse me.</p> <p>24 Objection. Privilege. And I make a</p> <p>25 standing objection. Has come up in recent</p>	<p>16</p> <p>1 Q This is another form filed with the</p> <p>2 Patent Office, and this one is a filing -- what's</p> <p>3 referred to as a Limited Judgment of Foreclosure.</p> <p>4 And I'm going to just skim down in the</p> <p>5 document -- first of all, before I go down, you'll</p> <p>6 see again that this is a document you filed, and</p> <p>7 attached to it is a Limited Judgment of</p> <p>8 Foreclosure in the litigation between</p> <p>9 Aequitas Equipment Finance, Vivato Networks, Inc.,</p> <p>10 and Vivato Networks Holdings, Inc., and related</p> <p>11 cross-actions.</p> <p>12 Do you recall being informed at some</p> <p>13 point in time that there had been a foreclosure</p> <p>14 action relating to the patent assets of</p> <p>15 Vivato Networks and Vivato Networks Holdings that</p> <p>16 related to the security interest that</p> <p>17 Aequitas Equipment Finance had?</p> <p>18 A I remember something about that.</p> <p>19 Q Okay. And let me ask you this.</p> <p>20 At the time that you became aware of the</p> <p>21 Judgment of Foreclosure, was that the time that</p> <p>22 you received the boxes of documents, the files?</p> <p>23 A I don't really recall. I have</p> <p>24 recollection of the boxes of files coming in,</p> <p>25 being told they were coming, having them come in,</p>

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<p>17</p> <p>1 having to process them. I don't remember the</p> <p>2 exact timing.</p> <p>3 Q Okay. Prior to the Judgment of</p> <p>4 Foreclosure, Aequitas Equipment Finance had a</p> <p>5 security interest but had not yet been granted the</p> <p>6 right to foreclose on the security.</p> <p>7 This judgment, which is an April 2009,</p> <p>8 basically is a judgment which granted them</p> <p>9 ownership of the patent collateral clear of any</p> <p>10 prior liens.</p> <p>11 I refer to that just to sharpen up and</p> <p>12 ask, do you recall that it was after</p> <p>13 Aequitas Equipment Finance actually had ownership</p> <p>14 of the patents that you received the files?</p> <p>15 A I don't recall.</p> <p>16 Q You do recall at the time you received</p> <p>17 it, though, that there was some sort of rush</p> <p>18 related to them?</p> <p>19 A There was a sense of urgency, yeah.</p> <p>20 Q And do you recall what the sense of</p> <p>21 urgency related to?</p> <p>22 A Just that the files needed work, I</p> <p>23 think.</p> <p>24 Q Other than -- at some point in time, did</p> <p>25 you actually then begin to prosecute any of the</p>	<p>19</p> <p>1 Q To the extent that you recall having</p> <p>2 reviewed the files and found that some</p> <p>3 applications had been abandoned, doesn't that</p> <p>4 suggest that you would have received the files</p> <p>5 sometime after December 11, 2008?</p> <p>6 A At least with respect to -- if that was</p> <p>7 one of the files I noticed as being abandoned,</p> <p>8 yes.</p> <p>9 MR. HASLAM: Can we have marked the next</p> <p>10 exhibit, Tab 18.1.</p> <p>11 (Exhibit 4 was marked for identification</p> <p>12 and is attached to the transcript.)</p> <p>13 MR. HASLAM: Can we enlarge that.</p> <p>14 Q This is a form that's a Power of</p> <p>15 Attorney or Revocation of Power of Attorney with a</p> <p>16 new Power of Attorney. And if you'll notice, the</p> <p>17 applicant's signature is Thomas A. Sidley, Senior</p> <p>18 Managing Director/Aequitas Capital Management.</p> <p>19 Do you recall talking to Mr. Sidley in</p> <p>20 connection with the patent portfolio of</p> <p>21 Vivato Networks Holdings that you were working on?</p> <p>22 A I don't have a specific recollection of</p> <p>23 that. We certainly -- we got -- somehow we got</p> <p>24 him to sign the document.</p> <p>25 Q You'll notice the date of his signature</p>
<p>18</p> <p>1 patents that Aequitas Equipment Finance had</p> <p>2 obtained ownership of?</p> <p>3 A Yes, I do remember that. There were --</p> <p>4 there were actions that needed to be responded to</p> <p>5 in some of the files.</p> <p>6 MR. HASLAM: Can we have Ambrose 5</p> <p>7 brought up.</p> <p>8 (Ambrose Exhibit 5 was previously marked</p> <p>9 for identification and is attached to the</p> <p>10 transcript.)</p> <p>11 Q This is a document that has been marked</p> <p>12 at an earlier deposition, and this is a -- an</p> <p>13 Office Action that was mailed on December 11,</p> <p>14 2008, and it is a Notice of Abandonment.</p> <p>15 Do you recall when you received the</p> <p>16 files and reviewed them, that you noticed that</p> <p>17 some of the files had been abandoned?</p> <p>18 A I seem to remember that.</p> <p>19 Q Okay. And now this Notice of</p> <p>20 Abandonment, as indicated, it was mailed</p> <p>21 December 11, 2008.</p> <p>22 Noting that date, does that refresh your</p> <p>23 recollection at all as to when you received the</p> <p>24 files from Aequitas?</p> <p>25 A No, that doesn't really help.</p>	<p>20</p> <p>1 here is -- I believe it is May 20, 2009, and it</p> <p>2 relates to patents with the inventor name</p> <p>3 James Brennan.</p> <p>4 And is that your signature on the page?</p> <p>5 A Yeah, that was my signature at the time.</p> <p>6 Q And that is on the last page of this</p> <p>7 document.</p> <p>8 And this was a filing that gave you</p> <p>9 Power of Attorney to work with the Patent Office</p> <p>10 in connection with this particular application,</p> <p>11 correct?</p> <p>12 A Yeah, that, yeah -- yes.</p> <p>13 Q And prior to the filing of this document</p> <p>14 with the Patent Office you would not have been</p> <p>15 authorized to deal with the Patent Office on this</p> <p>16 file, correct?</p> <p>17 A Right.</p> <p>18 Q And the date of this is May 22nd, 2009.</p> <p>19 A Right.</p> <p>20 Q Again, I apologize for continuing to --</p> <p>21 at times to ask you if documents put things in</p> <p>22 date sequence, but I'm going to do that again.</p> <p>23 Given that this is dated May 22nd, 2009,</p> <p>24 does this help you place when you got the actual</p> <p>25 boxes with the patent files from Aequitas that you</p>

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21	23
1 reviewed and found there were some abandoned	1 yes.
2 applications on?	2 Q And one of the requirements for the
3 A Well, yeah, I might have had the files	3 petition is a statement that the entire delay was
4 by then. I don't know how long I'd had them. I	4 unintentional. Do you see that?
5 don't think I worked on them for very -- for too	5 A Yes.
6 long.	6 Q Okay. How did you determine that the
7 Q Okay. Now, we saw Ambrose Exhibit 5	7 delay resulting in abandonment was unintentional?
8 that the -- there was a Notice of Abandonment in	8 MR. WANG: Objection to the extent it
9 this application that was mailed on December 11,	9 calls for attorney/client privilege.
10 2008, and you were appointed -- or given Power of	10 A I remember -- I believe we investigated
11 Attorney to act on behalf of Aequitas with the	11 the relationship of the application, the entities,
12 Patent Office in May.	12 of who owned what when. I don't know, there was a
13 Do you recall what actions, if any, on	13 history that evolved -- I thought -- I seem to
14 the Vivato Networks' portfolio you were taking	14 remember it was bankruptcy, but maybe it wasn't
15 between December 11, 2008, and May 22nd, 2009?	15 bankruptcy.
16 MR. WANG: Objection. Privilege.	16 But yeah, I mean generally speaking,
17 Q Do you recall?	17 that was the kind of information we would have
18 A My recollection is that there were a	18 elicited.
19 number of files, a number of boxes, and just	19 Q And from whom would you have elicited
20 trying to get myself up to speed on the	20 that information?
21 technology, what was being applied for, where the	21 A The attorney -- I think a lot of our
22 prosecution stood in each file.	22 communications went through the attorney at
23 Q Okay.	23 Bullivant, the corporate attorney from the other
24 A There was just kind of catch-up on all	24 office, whoever that would have been.
25 the files and all the portfolio.	25 Q Did you do any analysis or research to
22	24
1 MR. HASLAM: Can we have pulled up Tab	1 see whether abandonment for non-payment qualified
2 19. We'll mark this as Exhibit 5.	2 as unintentional?
3 (Exhibit 5 was marked for identification	3 MR. WANG: Objection to the extent it
4 and is attached to the transcript.)	4 calls for attorney/client privilege.
5 Q Mr. Schwedler, I will scroll through	5 A I don't remember doing that
6 this document and if at any point there's	6 specifically.
7 something you want me to stop on so that you can	7 Q Had you filed petitions for revival of
8 review it, let me know.	8 abandoned patents prior to working on the
9 A Okay.	9 Vivato Networks' files?
10 Q This is a Petition for Revival of an	10 A Yeah, I believe it came up in practice.
11 Application for Patent Abandoned Unintentionally	11 Q And in the past -- let me withdraw that.
12 at 37 CFR .137(b), the application of which was	12 Had any of the applications where you
13 filed May 30th, 2006.	13 had been the prosecuting attorney ever gone
14 It indicates that the application had	14 abandoned?
15 been abandoned for failure to file a timely and	15 A I believe that may have happened.
16 proper reply to a Notice of Action by the Patent	16 Q And in those cases, was it basically the
17 Office.	17 crush of work or a deadline that didn't get --
18 Is that your signature --	18 A Yeah, bad document -- yeah, something
19 A Yes.	19 like that.
20 Q -- that is on page 2 of 2?	20 Q Had you ever received files that had
21 And the date is November 2nd, 2009.	21 been worked on by an attorney at a different firm
22 Do you recall filing this request for	22 after which you learned that some of the files
23 Revival of an Application?	23 that you received had gone abandoned? Had that
24 A Not that specific one, but I do remember	24 ever happened before?
25 we did that kind of work on some of the files,	25 MR. WANG: Objection. Vague. Calls for

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Conducted on July 8, 2022

<p>25</p> <p>1 speculation.</p> <p>2 A I don't recall any specific incidents of</p> <p>3 that.</p> <p>4 Q Was this, to the best of your</p> <p>5 recollection, the Vivato Networks Holdings'</p> <p>6 portfolio, the first time you had received files</p> <p>7 from a client that had been worked on by another</p> <p>8 attorney and learned that some of the applications</p> <p>9 had gone abandoned?</p> <p>10 A I don't recall that ever being --</p> <p>11 Q I missed that. You don't recall any</p> <p>12 others?</p> <p>13 A I don't recall any others in my</p> <p>14 recollection.</p> <p>15 Q And that your best recollection about</p> <p>16 what you knew about the circumstances of this</p> <p>17 particular application that's the subject of</p> <p>18 Exhibit 5 had to do with either bankruptcy or</p> <p>19 something like that?</p> <p>20 A Financial difficulties. The files had</p> <p>21 not been working on -- somebody had stopped</p> <p>22 working on the files for some reason.</p> <p>23 Q I'll represent to you that Mr. Brooks</p> <p>24 was the attorney who had worked on the files, the</p> <p>25 Vivato Networks Holdings' files earlier. He's</p>	<p>27</p> <p>1 (Brooks Exhibit 11 was previously marked</p> <p>2 for identification and is attached to the</p> <p>3 transcript.)</p> <p>4 Q I'll scroll through this document for</p> <p>5 you. This is a communication from the</p> <p>6 United States Patent and Trademark Office dated</p> <p>7 October 31, 2008. It is an Interview Summary in</p> <p>8 connection with this application.</p> <p>9 It indicates that on September 26, 2008,</p> <p>10 the Examiner telephoned Christopher R. Ambrose.</p> <p>11 Mr. Christopher R. Ambrose said he would rehire</p> <p>12 Edward Brooks to work on the application. And on</p> <p>13 9/30/2008 he telephoned Mr. Edward J. Brooks.</p> <p>14 Mr. Edward J. Brooks said he has not received a</p> <p>15 message from Christopher R. Ambrose to continue</p> <p>16 work on the application.</p> <p>17 Do you recall having reviewed this when</p> <p>18 you reviewed the files?</p> <p>19 A Well, if it was in the file, I assume I</p> <p>20 would have looked at it, if it was in the file.</p> <p>21 Q And attached to that was a Notice of</p> <p>22 Abandonment of this file, and I take it that in</p> <p>23 reviewing the box of files after you got it, you</p> <p>24 would have noticed that this particular file had</p> <p>25 also gone abandoned?</p>
<p>26</p> <p>1 been deposed in this case, and he does not recall</p> <p>2 ever having any discussions with you.</p> <p>3 Let me ask you, do you think you had any</p> <p>4 discussions with Mr. Brooks about any of the</p> <p>5 Vivato Networks' files?</p> <p>6 A I remember a lot of communications were</p> <p>7 through the attorney at Bullivant.</p> <p>8 Q Okay. This is right now just a yes/no</p> <p>9 question.</p> <p>10 Did you also discuss any of the</p> <p>11 circumstances surrounding abandonment, the</p> <p>12 abandonment of this particular application with</p> <p>13 anyone at Aequitas Capital Management or</p> <p>14 Aequitas Equipment Finance?</p> <p>15 MR. WANG: Objection. Privilege.</p> <p>16 A I don't specifically remember that.</p> <p>17 MR. HASLAM: Can we have Brooks 2</p> <p>18 brought up.</p> <p>19 AV TECHNICIAN: Brooks 2 should be on</p> <p>20 screen now.</p> <p>21 MR. HASLAM: I apologize. Can I have</p> <p>22 Brooks 11? Apologize. I called out the wrong</p> <p>23 exhibit.</p> <p>24 AV TECHNICIAN: This one should also be</p> <p>25 on screen now.</p>	<p>28</p> <p>1 A Yeah, I assume I would have sorted that</p> <p>2 out.</p> <p>3 Q And when you received the box of files</p> <p>4 relating to the Vivato Networks' patent portfolio,</p> <p>5 did you receive those files all at once?</p> <p>6 A I think I did. It seems to me we were</p> <p>7 waiting for them, waiting for them, and they all</p> <p>8 came in at once. That's my recollection.</p> <p>9 Q Do you recall who said there was a</p> <p>10 rush -- something rush about the files, doing</p> <p>11 something with the files, where that came from?</p> <p>12 A I assume the -- I don't remember the</p> <p>13 name, but the corporate attorney at Bullivant out</p> <p>14 of one of the other offices.</p> <p>15 MR. HASLAM: Can we have Tab 21. I'll</p> <p>16 mark this as Schwedler Exhibit 6.</p> <p>17 (Exhibit 6 was marked for identification</p> <p>18 and is attached to the transcript.)</p> <p>19 Q This is another Petition for Revival of</p> <p>20 an Application for Patent Abandoned</p> <p>21 Unintentionally Under 37 CFR (b) -- 1.137(b).</p> <p>22 It's for application for Patent 10/700,342, and it</p> <p>23 was filed November 3rd, 2003.</p> <p>24 I'm going to scroll down in this.</p> <p>25 Again, this petition required a</p>

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29	31
1 statement that the entire delay was unintentional.	1 familiar?
2 Was it your -- did you come to an	2 A Maybe. It's been a while.
3 understanding that the abandonment of this	3 Q When the files were -- when the files
4 particular application was for the similar reasons	4 were transferred, do you recall what it was -- why
5 as what we saw in Exhibit 5, the request for	5 it was that the files were transferred from
6 revival in a different file?	6 Bullivant and your responsibility to another firm?
7 A Yeah, I don't remember thinking there	7 A No, I don't remember why. I do remember
8 was something different about it.	8 at all times when I was working on the
9 Q So your action on -- of taking steps to	9 prosecution, though, it was -- I was considering
10 determine whether it had been unintentional or not	10 it a stopgap until they could find other
11 was the same as what you testified to earlier?	11 representation.
12 A Right. Yeah, conversations with at	12 Q Why did you consider it stopgap?
13 least the corporate attorney in Bullivant.	13 A I was the only attorney with a patent --
14 Q And I'll ask you again. You don't	14 registered patent -- I was the only registered
15 recall having talked with anyone at the client,	15 patent attorney at Bullivant. I think there -- I
16 Aequitas Capital or Aequitas Equipment Finance, in	16 think there may have been one other junior woman,
17 connection with the attempts to revive the	17 but that was not really my area of technology.
18 abandoned applications; is that correct?	18 Q What was your area of technology?
19 A That is correct.	19 A I was trained as a biologist.
20 Q And it's your best recollection that you	20 Q Do you have -- recall ever having any
21 did not talk to Mr. Brooks about the circumstances	21 conversations with a Mr. Haycox?
22 surrounding his withdrawal from prosecuting the	22 A Not offhand, no.
23 files; is that correct?	23 Q Do you recall having any conversations
24 A That's correct.	24 with anyone who had previously been associated
25 Q That's your signature on page 2 of 25 on	25 with the Vivato Networks Holdings' portfolio in
30	32
1 this particular request for revival?	1 connection with attempts to sell the portfolio?
2 A Yes, I believe that's so.	2 A No, I don't believe -- I don't believe I
3 Q And is that your handwriting on the	3 was involved with that.
4 October 30, 2009, date that's next to your	4 Q But your -- the limit of what you were
5 signature?	5 doing relating to the Vivato Networks Holdings'
6 A Yes. It was starting to go downhill	6 patent portfolio was, as you say, stopgap
7 then, but that looks about right.	7 prosecution and the filings to revive abandoned
8 Q It still looks pretty good to me.	8 applications, correct?
9 In connection with the filing of this,	9 A Yeah, to keep the balls in the air until
10 you also filed an amendment in response to an	10 something could be decided.
11 Office Action of April 3rd, 2008; is that correct?	11 Q Okay.
12 A I believe I had to.	12 MR. HASLAM: Can we have Bullivant 12,
13 Q Right. And that was something -- that's	13 and we'll mark this as 7.
14 because that Office Action had been pending at the	14 (Exhibit 7 was marked for identification
15 time of abandonment?	15 and is attached to the transcript.)
16 A Right.	16 Q This is another Office Action from the
17 MR. HASLAM: We can take that exhibit	17 United States Patent and Trademark Office in
18 down.	18 connection with application 10/700,329, and the
19 Q Do you recall at some point in time that	19 mailing date of this is January 8, 2009.
20 the files relating to Vivato Networks' portfolio,	20 And I'll scroll down.
21 responsibility for that, was passed on to another	21 This is another file in which there was
22 attorney?	22 a Notice of Abandonment issued on that date -- or
23 A I do believe so, yes. I don't -- I	23 mailed on that date, January 8, 2009.
24 don't recall who that was or ...	24 Am I correct that this would have been
25 Q Does the name Daniel Brooks sound	25 another Notice of Abandonment you would have

33

1 located when you went through the files after you
2 received them?

3 A Yes.

4 Q And am I --

5 A More of the same.

6 Q And am I correct that given that this
7 particular Notice of Abandonment was mailed on
8 January 8, 2009, that you would have received the
9 files at some date after that in order for you to
10 have noticed that this had been abandoned?

11 A Yeah, I think it must be, yeah.

12 MR. HASLAM: Can we have Tab 23. We'll
13 mark this as Exhibit 8.

14 (Exhibit 8 was marked for identification
15 and is attached to the transcript.)

16 Q This is a Petition for Revival of an
17 Application for Patent Abandoned Unintentionally
18 Under 37 CFR 1-1.37(b). And this was filed on
19 November 3rd, 2003.

20 And again, the petition, as noted on
21 this form, required a statement that the entire
22 delay was unintentional.

23 And I'll just ask you, was the basis on
24 which you made the statement that the entire delay
25 was unintentional was related to the bankruptcy or

34

1 bankruptcy-type issues?

2 A The information I received from -- yeah,
3 I seem to remember all -- I'm starting to remember
4 now that a lot -- it was a frustration of this
5 prosecution of these patents that all the
6 communications were conveyed through the attorney
7 at Bullivant.

8 Q And why was that a source of
9 frustration?

10 A I -- I seem to remember I wanted -- I
11 would have liked access to the inventors for a
12 number of reasons.

13 Q Why would you have wanted access to the
14 inventors?

15 MR. WANG: Objection. Calls for
16 attorney/client privilege.

17 MR. HASLAM: I'm asking why, not for any
18 communications.

19 Q Why -- I'm asking right now for what you
20 would have asked them. I'm asking why you would
21 have wanted access to the inventors.

22 A Well, to understand the technology
23 better, understand the course of the prosecution,
24 all those -- all of the reasons you would want
25 that prosecution.

35

1 Q So would one of those things you also
2 would have wanted to ask the inventors what they
3 knew about the circumstances as to why the
4 applications had gone abandoned?

5 A Of course.

6 MR. WANG: Objection.

7 Q Was there a reason that you were not
8 able to talk to the inventors?

9 A I cannot think of any good reason. I
10 think at the time I was frustrated that it might
11 have been resource driven.

12 Q And "resource driven" meaning the client
13 didn't want to spend the money?

14 A Yeah.

15 Q And I think I've asked you this, and I
16 apologize if I have, you've told me that the
17 information you had, which you based the statement
18 that the entire delay was unintentional, may have
19 come from one of your colleagues at the Bullivant
20 law firm.

21 Do you recall on any of the -- with
22 respect to any of the applications that went
23 abandoned, that you talked to anyone at the
24 client, Aequis Capital Management or
25 Aequis Equipment Finance?

36

1 MR. WANG: Objection to the extent it
2 calls for privilege.

3 MR. HASLAM: At this point I'm just
4 asking whether he did have such conversations.

5 A I don't think -- I don't think I had
6 those conversations.

7 Q Was that resource constraint, too?

8 THE WITNESS: That was my dog.

9 Q Was the reason you didn't have
10 conversations with the client a matter of
11 resources?

12 A Well, I think that there was a breakdown
13 in communication. My understanding, there was
14 also some breakdown in communication.

15 Q When you say "breakdown in
16 communication," what do you mean?

17 A The relationships were maybe not good.

18 Q And do you mean between the law firm and
19 the Aequis entities?

20 A Whoever -- whoever acquired the patents
21 and the original -- originators of the patents.

22 Q And how would that have impacted your
23 ability to talk to somebody at Aequis?

24 MR. WANG: Objection. Calls for
25 speculation.

<p>37</p> <p>1 A I just remember being told to do -- to</p> <p>2 run the communications through the attorney at</p> <p>3 Bullivant.</p> <p>4 Q And that either came from the client or</p> <p>5 from your colleague at Bullivant?</p> <p>6 A Sorry, could you repeat that?</p> <p>7 Q Yeah. I was just asking you that the --</p> <p>8 sort of the instruction to run things through your</p> <p>9 colleague at Bullivant for information flow, was</p> <p>10 that something that your colleague requested, or</p> <p>11 was that something you understood the client</p> <p>12 wanted?</p> <p>13 A All I know is what the colleague</p> <p>14 requested.</p> <p>15 Q Okay. Thank you.</p> <p>16 MR. HASLAM: Can we have Tab 23.</p> <p>17 AV TECHNICIAN: I think this is Tab 23.</p> <p>18 Do you mean 23.1?</p> <p>19 MR. HASLAM: Oh, it is 23. 23.1,</p> <p>20 please, thank you.</p> <p>21 (Exhibit 9 was marked for identification</p> <p>22 and is attached to the transcript.)</p> <p>23 Q This is a message from the Patent Office</p> <p>24 mailed November 3rd, 2009, in connection with that</p> <p>25 same application we just looked at. And this</p>	<p>39</p> <p>1 left Bullivant, you're just not sure when?</p> <p>2 A Yeah.</p> <p>3 Q Am I -- and do you recall having any</p> <p>4 conversations with Mr. Burke after the files were</p> <p>5 transferred to Mr. Burke concerning the</p> <p>6 circumstances surrounding why any of the</p> <p>7 applications that had been abandoned in the</p> <p>8 Vivato Networks' portfolio had been abandoned?</p> <p>9 A I don't recall.</p> <p>10 MR. WANG: Objection. Privilege.</p> <p>11 Q You don't recall doing that?</p> <p>12 A I don't recall talking to Dr. --</p> <p>13 Mr. Burke, no.</p> <p>14 Q Do you recall having had any</p> <p>15 conversations with a Mr. Ambrose concerning the</p> <p>16 Vivato Networks' portfolio?</p> <p>17 A I don't recall that.</p> <p>18 Q I'll ask you this one final time.</p> <p>19 Between the time you received the files</p> <p>20 relating to the Vivato Networks' patent</p> <p>21 applications and patents and the time that the</p> <p>22 files were transferred for handling to Mr. Burke,</p> <p>23 did you ever have any discussions with</p> <p>24 Thomas Sidley at Aequitas Capital or</p> <p>25 Aequitas Equipment Finance concerning the</p>
<p>38</p> <p>1 decision noted here indicates that the request to</p> <p>2 revive was dismissed.</p> <p>3 Do you recall that there was one</p> <p>4 instance which, because you had not attached an --</p> <p>5 a Power of Attorney, that the application to</p> <p>6 revive was denied, or dismissed?</p> <p>7 A I don't recall that.</p> <p>8 MR. HASLAM: Can we have Tab 25. We'll</p> <p>9 want this as Exhibit 10.</p> <p>10 (Exhibit 10 was marked for</p> <p>11 identification and is attached to the transcript.)</p> <p>12 Q This is a filing with the Patent Office</p> <p>13 that is time stamped as having been received by</p> <p>14 the Patent Office on April 29, 2010. It's a Power</p> <p>15 of Attorney and this gives Power of Attorney to</p> <p>16 Daniel Burke.</p> <p>17 I know I asked you about Mr. Burke</p> <p>18 before, but does this refresh your recollection</p> <p>19 that sometime in 2010 the files relating to</p> <p>20 Vivato Networks were transferred for handling to a</p> <p>21 Mr. Burke?</p> <p>22 A Yeah, I -- I'm not sure when I left</p> <p>23 Bullivant, so I'm not sure whether that would have</p> <p>24 been before or after I was out the door.</p> <p>25 Q Okay. There was a time at which you</p>	<p>40</p> <p>1 circumstances surrounding why patent applications</p> <p>2 in the Vivato Networks Holdings' portfolio had</p> <p>3 gone abandoned?</p> <p>4 A I don't recall ever directly talking to</p> <p>5 him.</p> <p>6 Q Given that -- I think you testified that</p> <p>7 the attempts to revive the abandoned applications</p> <p>8 in the Vivato Networks' portfolio that you were</p> <p>9 handling was the first time you recall dealing</p> <p>10 with revival of abandoned applications, other than</p> <p>11 discussions with your colleague at Bullivant, did</p> <p>12 you do any research or talk to anybody else about</p> <p>13 reviving abandoned applications?</p> <p>14 MR. WANG: Objection. Calls for</p> <p>15 privilege.</p> <p>16 Q You can answer.</p> <p>17 A Yeah, I assume I would have done some</p> <p>18 outside research at least.</p> <p>19 Q Do you recall -- apologies if I asked</p> <p>20 this.</p> <p>21 Was the colleague that you were</p> <p>22 discussing the issues related to the</p> <p>23 Vivato Networks Holdings' portfolio, was he a</p> <p>24 corporate attorney?</p> <p>25 A Yes, I believe so.</p>

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<p>41</p> <p>1 MR. HASLAM: That's all I have. Thank</p> <p>2 you very much for your time. I think other</p> <p>3 counsel may have some questions.</p> <p>4 MR. WANG: Thank you, Mr. Schwedler.</p> <p>5 We've been going for more than an hour. If it's</p> <p>6 okay with you, could we take a five- or 10-minute</p> <p>7 break and then continue?</p> <p>8 THE WITNESS: Yeah, sure.</p> <p>9 MR. WANG: Okay. If it's fine with</p> <p>10 everyone, I think five minutes or whatever you</p> <p>11 prefer, Mr. Schwedler.</p> <p>12 THE WITNESS: Five minutes would be</p> <p>13 fine.</p> <p>14 MR. WANG: Let's go off the record.</p> <p>15 THE VIDEOGRAPHER: Off record, 5:12.</p> <p>16 (A recess was taken.)</p> <p>17 THE VIDEOGRAPHER: On record, 5:19.</p> <p>18 EXAMINATION BY COUNSEL FOR PLAINTIFF</p> <p>19 BY MR. WANG:</p> <p>20 Q Welcome back, Mr. Schwedler.</p> <p>21 How many years have you been a patent</p> <p>22 prosecutor?</p> <p>23 A Have I been a patent prosecutor?</p> <p>24 Q Yes.</p> <p>25 A I think I registered in 1995.</p>	<p>43</p> <p>1 A Certainly.</p> <p>2 Q You're aware that I represent the</p> <p>3 current Patent Owner, XR, of the patents that</p> <p>4 arose from some of the applications that we've</p> <p>5 talked about?</p> <p>6 A Yes, I know that.</p> <p>7 Q And you're aware that Mr. Haslam</p> <p>8 represents Aruba, who is an accused infringer of</p> <p>9 some of these patents, correct?</p> <p>10 A Yes.</p> <p>11 Q And are you aware that Aruba in this</p> <p>12 litigation has made the allegation that you,</p> <p>13 Mr. Schwedler, committed inequitable conduct</p> <p>14 before the Patent and Trademark Office?</p> <p>15 A No.</p> <p>16 Q In your -- today we looked at several</p> <p>17 Petitions for Revival that were submitted to the</p> <p>18 Patent and Trademark Office. Do you recall that?</p> <p>19 A Yes.</p> <p>20 Q And in those documents you signed your</p> <p>21 name, you included your Patent and Trademark</p> <p>22 number, and you made certain representations to</p> <p>23 the Patent and Trademark Office. Do you recall</p> <p>24 that?</p> <p>25 A Yes.</p>
<p>42</p> <p>1 Q And for how many years did you practice</p> <p>2 as a patent prosecutor?</p> <p>3 A Until about 2015.</p> <p>4 Q So for about 20 years, correct?</p> <p>5 A 20 years, sure.</p> <p>6 Q Right.</p> <p>7 And in 1995 was when you were -- you</p> <p>8 were admitted to the Patent Bar and you got a PTO</p> <p>9 registration number?</p> <p>10 A Yeah, got to register.</p> <p>11 Q And in those 20 years, have you ever</p> <p>12 been subject to any disciplinary proceedings</p> <p>13 before the PTO?</p> <p>14 A I don't think so. There is -- I stopped</p> <p>15 practicing, and there was a client who had filed a</p> <p>16 complaint, but I don't think there was</p> <p>17 proceedings.</p> <p>18 Q Okay. So you're aware that patent</p> <p>19 attorneys have a duty of candor with the Patent</p> <p>20 and Trademark Office, correct?</p> <p>21 A Yes.</p> <p>22 Q And at all times in your career did you</p> <p>23 take those obligations seriously in your</p> <p>24 communications with the Patent and Trademark</p> <p>25 Office?</p>	<p>44</p> <p>1 Q Including about the prior abandonment of</p> <p>2 certain applications being unintentional, correct?</p> <p>3 A Yes.</p> <p>4 Q When you submitted those documents, did</p> <p>5 you have -- strike that.</p> <p>6 When you submitted those documents, were</p> <p>7 they based on your best information at the time?</p> <p>8 A Yes, certainly.</p> <p>9 Q And were they based on a reasonable</p> <p>10 investigation into what you needed to know to make</p> <p>11 those representations?</p> <p>12 A Yes, certainly.</p> <p>13 Q Did you ever intend to deceive the</p> <p>14 Patent and Trademark Office in making those</p> <p>15 submissions?</p> <p>16 A No, never.</p> <p>17 Q Did you ever have -- did you ever have</p> <p>18 or receive any information contrary to the</p> <p>19 representations that you made?</p> <p>20 A No.</p> <p>21 Q Did you ever receive any information</p> <p>22 that the patent applications that we've been</p> <p>23 talking about were deliberately abandoned? In</p> <p>24 other words, that they were abandoned on purpose?</p> <p>25 A No, no, that was contrary to my</p>

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<p>45</p> <p>1 understanding.</p> <p>2 Q Your understanding was that the patents</p> <p>3 were -- if certain ones were abandoned, it was</p> <p>4 unintentional?</p> <p>5 A Absolutely, yes.</p> <p>6 Q Through all relevant periods that were</p> <p>7 subject to the certifications that you made?</p> <p>8 A Yes, yes, certainly.</p> <p>9 MR. HASLAM: Objection. Leading. Move</p> <p>10 to strike for the purposes of interposing the</p> <p>11 objection.</p> <p>12 Q And so, for example, Mr. Schwedler,</p> <p>13 you --</p> <p>14 MR. WANG: Excuse me, Mr. Haslam.</p> <p>15 Q For example, Mr. Schwedler, you never</p> <p>16 received any information that applications were</p> <p>17 intentionally abandoned because the Office Actions</p> <p>18 could not be overcome?</p> <p>19 A No, no.</p> <p>20 Q And you never received any information</p> <p>21 that certain applications were abandoned because</p> <p>22 it was decided they were not patentable, ever?</p> <p>23 A No, never received that information.</p> <p>24 Q You never received any information that</p> <p>25 certain applications were abandoned because they</p>	<p>47</p> <p>1 might have been -- that might have come from the</p> <p>2 inventors were not necessary for you to make those</p> <p>3 submissions to the Patent Office?</p> <p>4 MR. HASLAM: Objection. Leading.</p> <p>5 A I believe that anything relevant would</p> <p>6 have been communicated through the managing</p> <p>7 partner of the case -- of the files. In Portland.</p> <p>8 Q You had mentioned that your internal</p> <p>9 contact within your firm was a corporate attorney.</p> <p>10 Do you remember that?</p> <p>11 A Yes.</p> <p>12 Q And you would not be relying on that</p> <p>13 attorney to make any legal conclusions about your</p> <p>14 obligations as a patent prosecuting attorney,</p> <p>15 correct?</p> <p>16 A No, I would have looked for him -- no.</p> <p>17 Q You would have gotten factual</p> <p>18 information from that attorney and then made your</p> <p>19 own conclusions, correct?</p> <p>20 A Yes. Yes.</p> <p>21 Q Have you ever been found to have</p> <p>22 committed inequitable conduct throughout your</p> <p>23 20-year career as a patent prosecutor?</p> <p>24 A No.</p> <p>25 Q Finally, Mr. Schwedler, I wanted to ask,</p>
<p>46</p> <p>1 were -- they lacked sufficient commercial value to</p> <p>2 justify continued prosecution?</p> <p>3 A No.</p> <p>4 Q Never?</p> <p>5 A Never.</p> <p>6 (Court Reporter clarification.)</p> <p>7 Q Mr. Schwedler, earlier today Mr. Haslam</p> <p>8 or you talked about possibly talking to the</p> <p>9 inventors of the applications. Do you recall</p> <p>10 that?</p> <p>11 A I didn't understand that question, could</p> <p>12 you repeat it?</p> <p>13 Q Do you recall earlier testimony about</p> <p>14 possibly speaking to the inventors of the</p> <p>15 applications at issue?</p> <p>16 A I remember talking about that, yes.</p> <p>17 Q Is it fair to say that if you needed</p> <p>18 information, direct information from the inventors</p> <p>19 in order to make your certifications, you would</p> <p>20 have gotten that information before making the</p> <p>21 certifications?</p> <p>22 A Yes.</p> <p>23 MR. HASLAM: Objection. Calls for</p> <p>24 speculation.</p> <p>25 Q So whatever additional information that</p>	<p>48</p> <p>1 when did you stop doing this work, or stop</p> <p>2 prosecuting?</p> <p>3 A Around 2015, '16. My Parkinson's became</p> <p>4 -- my Parkinson's disease progressed that I</p> <p>5 couldn't practice anymore.</p> <p>6 Q Okay. I'm sorry to hear that. And</p> <p>7 you're still dealing with that disease now?</p> <p>8 A Yes.</p> <p>9 MR. WANG: With that, I have nothing</p> <p>10 further. Thank you, Mr. Schwedler.</p> <p>11 MR. HASLAM: I have just a few</p> <p>12 follow-up.</p> <p>13 FURTHER EXAMINATION BY COUNSEL FOR ARUBA</p> <p>14 BY MR. HASLAM:</p> <p>15 Q You were asked some questions about your</p> <p>16 investigation before filing the Petitions to</p> <p>17 Revoke. I just want to go over that.</p> <p>18 So one of things you did is you talked</p> <p>19 to the corporate attorney in the Portland office</p> <p>20 who was the corporate attorney for Aquitas,</p> <p>21 correct?</p> <p>22 A Yes.</p> <p>23 Q You did not talk to the prior counsel</p> <p>24 who had been prosecuting the patents at the time</p> <p>25 they went abandoned, correct?</p>

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<p>49</p> <p>1 A I do not remember doing that, no.</p> <p>2 Q You did not talk to anyone at Aequitas</p> <p>3 about information they may have known about why</p> <p>4 the patents went abandoned?</p> <p>5 A Only indirectly, through the corporate</p> <p>6 attorney.</p> <p>7 Q Only through the corporate attorney.</p> <p>8 You said you may have done some</p> <p>9 research. You did not find a case, did you, that</p> <p>10 said that non-payment leading to abandonment made</p> <p>11 the abandonment unintentional; isn't that correct?</p> <p>12 MR. WANG: Objection.</p> <p>13 A I don't recall.</p> <p>14 MR. WANG: Privilege.</p> <p>15 Q I'm sorry, did I hear an answer?</p> <p>16 A I don't recall.</p> <p>17 Q After the files were turned over to</p> <p>18 Mr. Burke, do you recall having any conversation</p> <p>19 with anybody at XR Communications about anything,</p> <p>20 any information that you may have had as to why</p> <p>21 the patent applications in the Vivato Networks'</p> <p>22 portfolio had gone abandoned?</p> <p>23 A I don't recall that. And again, I'm not</p> <p>24 sure about the timing about when I left Bullivant.</p> <p>25 Q Why did you stop the practice of law?</p> <p>50</p>	<p>51</p> <p>1 the email; I don't remember his name.</p> <p>2 Q Was it Mr. Sharma?</p> <p>3 A Yes, I think that's right.</p> <p>4 Q About how many conversations have you</p> <p>5 had with Mr. Sharma?</p> <p>6 A At least a couple.</p> <p>7 Q Did Mr. Sharma ever reveal to you that</p> <p>8 his firm and his client were alleging that you</p> <p>9 committed inequitable conduct in patent --</p> <p>10 A Absolute -- absolutely not. No hint or</p> <p>11 suggestion.</p> <p>12 Q Assuming that they are making</p> <p>13 allegation, do you find that his communications</p> <p>14 with you were misleading?</p> <p>15 A Yeah, bordering on dishonorable.</p> <p>16 Q How many phone calls have you had with</p> <p>17 Mr. Sharma?</p> <p>18 A I think at least two. He left a couple</p> <p>19 of messages -- I wouldn't consider them</p> <p>20 conversations -- about this.</p> <p>21 Q And about how many email exchanges have</p> <p>22 you had with him or his firm?</p> <p>23 A Several. Several.</p> <p>24 Q More than three?</p> <p>25 A Yes, yes.</p> <p>52</p>
<p>1 A Parkinson's disease.</p> <p>2 Q Were there any other reasons?</p> <p>3 A No. That was a good enough one.</p> <p>4 Q Okay.</p> <p>5 MR. HASLAM: I have no further</p> <p>6 questions.</p> <p>7 MR. WANG: I just have a couple.</p> <p>8 FURTHER EXAMINATION BY COUNSEL FOR THE PLAINTIFF</p> <p>9 BY MR. WANG:</p> <p>10 Q Mr. Schwedler, are you being compensated</p> <p>11 for your testimony here today?</p> <p>12 A There was -- there was conversation</p> <p>13 about, but I don't think I signed agreements to</p> <p>14 it.</p> <p>15 Q And did -- did Aruba's counsel at</p> <p>16 Covington Burling first reach out to you about</p> <p>17 your testimony today?</p> <p>18 A Yeah, they're the ones who first reached</p> <p>19 out to me.</p> <p>20 Q And when was that?</p> <p>21 A Oh, gosh, it was a while ago. Maybe a</p> <p>22 month ago. I've got emails, I could ...</p> <p>23 Q Okay. And who did you have</p> <p>24 conversations with at Covington & Burling?</p> <p>25 A Those are only -- I'd have to look at</p>	<p>1 Q And I assume that during one of the</p> <p>2 first communications with Mr. Sharma, he or his</p> <p>3 firm offered to compensate you for your testimony?</p> <p>4 A Yes.</p> <p>5 Q And that was something that he brought</p> <p>6 up in the first instance, correct?</p> <p>7 A Absolutely.</p> <p>8 MR. WANG: With that, I have nothing</p> <p>9 further.</p> <p>10 MR. HASLAM: Just one or two follow-up.</p> <p>11 FURTHER EXAMINATION BY COUNSEL FOR ARUBA</p> <p>12 BY MR. HASLAM:</p> <p>13 Q Many of the emails you exchanged with</p> <p>14 Mr. Sharma were trying to set up or arrange a time</p> <p>15 you might be able to talk; is that correct?</p> <p>16 A That's correct.</p> <p>17 Q The emails themselves were not</p> <p>18 substantive communications, correct?</p> <p>19 A Not the emails, no.</p> <p>20 Q You had what, one or two conversations</p> <p>21 with Mr. Sharma?</p> <p>22 A Yeah.</p> <p>23 Q And he asked you questions similar to</p> <p>24 the ones I asked you today, correct?</p> <p>25 A No.</p>

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